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Bo-Ty Plus, Inc. and Linda Wood

Local 929, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO. and Linda Wood. Cases 11-CA-18574 and 11-CB-3052

February 22, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN
AND WALSH

Upon a charge filed by the Charging Party on January 31, 2000, the General Counsel of the National Labor Relations Board issued a complaint on April 28, 2000, against Bo-Ty Plus, Inc., the Respondent Employer, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Upon a charge and amended charges filed by the Charging Party on April 26, July 27, August 29, and September 28, 2000, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on September 29, 2000, against Bo-Ty Plus, Inc., the Respondent Employer, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act and against Local 929, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO, the Respondent Union, alleging that it has violated Section 8(b)(1)(A) and 8(b)(2) of the Act. Although properly served copies of the charges and consolidated complaint, the Respondent Union failed to file an answer.

On December 29, 2000, the General Counsel filed a Motion for Partial Summary Judgment with the Board. On January 3, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent Union filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment

disclose that the Region, by letters dated October 27, 2000, notified both the Respondent Employer and the Respondent Union that unless an answer were received by November 3, 2000, a Motion for Summary Judgment would be filed. The Respondent Employer filed an answer on November 3, 2000. The Respondent Union has not filed an answer.

In the absence of good cause being shown for the Respondent Union's failure to file a timely answer, we grant the General Counsel's Motion for Partial Summary Judgment against the Respondent Union.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent Employer, a South Carolina corporation, with a main office located at Traveler's Rest, South Carolina, has been engaged in the business of providing stage and production labor to various entities within the State of South Carolina. In the 12-month period preceding issuance of the consolidated complaint, a representative period, the Respondent Employer provided services valued in excess of \$50,000 to Volume Services, Inc., a Delaware corporation, which operates and manages the Bi-Lo Center in Greenville, South Carolina. In the 12-month period preceding issuance of the consolidated complaint, a representative period, Volume Services, Inc. purchased and received at its Bi-Lo Center facility in Greenville, South Carolina, goods and materials valued in excess of \$50,000 directly from points outside the State of South Carolina. We find that the Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act² and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all times material herein, Gene Coffy occupied the position of business agent with the Respondent Union and has been and is now an agent of the Respondent Union, acting on its behalf, within the meaning of Section 2(13) of the Act.

Since on or about October 26, 1999, the Respondent Employer and the Respondent Union have maintained a practice which provides that the Respondent Union shall be the sole and exclusive source of referrals of employee applicants for employment with the Respondent Employer.

¹ The General Counsel's motion does not seek summary judgment with respect to the unfair labor practice allegations against the Respondent Employer. Accordingly, these allegations are severed and remanded to the Regional Director for further appropriate action.

² None of the foregoing jurisdictional allegations regarding the Respondent Employer were denied by the Respondent Employer in the answer it filed to the consolidated complaint.

Since on or about October 26, 1999, and continuing thereafter, the Respondent Union, through its officer and agent, Gene Coffy, has failed and refused, and continues to fail and refuse, to register for referral and to refer for employment with the Respondent Employer at its facilities in Traveler's Rest, South Carolina, the following employees: Linda Wood, Lisa Johnson, and Ron Bowlin.

The Respondent Union engaged in the acts and conduct set forth above in retaliation for the above employees having filed internal union charges and/or because of their support for individuals having filed internal union charges, and for other arbitrary, invidious and discriminatory reasons. Further, by these acts, the Respondent Union has caused and is causing the Respondent Employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, and the Respondent Union has thereby engaged in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent Union has been restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent Union has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to register for referral and to refer Linda Wood, Lisa Johnson, and Ron Bowlin for employment with the Respondent Employer in retaliation for the employees' having filed or supported someone who filed internal union charges, we shall order it to register and refer those employees in a nondiscriminatory manner and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³

ORDER

The National Labor Relations Board orders that the Respondent Union, Local 929, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, AFL-CIO, Greenville, South Carolina, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing and refusing to register for referral, and to refer for employment with the Respondent Employer,

employees Linda Wood, Lisa Johnson, and Ron Bowlin in retaliation for the employees' having filed, or supported someone who filed, internal union charges.

(b) Causing the Respondent Employer to discriminate against its employees in violation of Section 8(a)(3) of the Act by failing and refusing to register for referral, and to refer for employment with the Respondent Employer, employees Linda Wood, Lisa Johnson, and Ron Bowlin in retaliation for the employees' having filed, or supported someone who filed, internal union charges.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Register for referral, and refer for employment with the Respondent Employer, employees Linda Wood, Lisa Johnson, and Ron Bowlin in a nondiscriminatory manner.

(b) Make Linda Wood, Lisa Johnson, and Ron Bowlin whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy portion of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all referral records and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its business office and meeting hall, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by Bo-Ty Plus, Inc., if willing, at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

³ This judgment against the Respondent Union does not affect the potential joint and several liability of the Respondent Employer.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. February 22, 2001

John C. Truesdale,	Chairman
Peter J. Hurtgen,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to register for referral, and to refer for employment with Bo-Ty Plus, Inc., employees Linda Wood, Lisa Johnson, and Ron Bowlin in

retaliation for their having filed, or supported someone who filed, internal union charges.

WE WILL NOT cause Bo-Ty Plus, Inc. to discriminate against its employees in violation of Section 8(a)(3) of the Act by failing and refusing to register for referral, and to refer for employment with Bo-Ty Plus, Inc., employees Linda Wood, Lisa Johnson, and Ron Bowlin in retaliation for the employees' having filed, or supported someone who filed, internal union charges.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL register for referral, and refer for employment with Bo-Ty Plus, Inc., employees Linda Wood, Lisa Johnson, and Ron Bowlin in a nondiscriminatory manner.

WE WILL make Linda Wood, Lisa Johnson, and Ron Bowlin whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

LOCAL 929, INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES, MOVING
PICTURE TECHNICIANS, ARTISTS AND ALLIED
CRAFTS OF THE UNITED STATES AND CANADA,
AFL-CIO